

Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed July 25, 2008.

I. Summary of Examiner's Rejections

Prior to the Office Action mailed July 25, 2008, Claims 8-24 and 26-30 were pending in the Application. In the Office Action, Claims 21-24 and 28-30 were rejected under 35 U.S.C. 101 because the claimed invention is directed toward non-statutory matter. Claim 8, 10, 15, 17, and 21-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah et al. (U.S. Patent No. 6,538,992, hereinafter Subbiah) in view of Saxe (U.S. Patent No. 5,631,908, hereinafter Saxe), and further in view of Zweig (U.S. Patent No. 7,280,495, hereinafter Zweig). Claims 11 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and of Saxe, in view of Zweig in further view of Lefebvre (U.S. Patent No. 7,123,619, hereinafter Lefebvre). Claims 9, 14, and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Saxe, in view of Zweig in further view of Henderson et al. (U.S. Patent No. 7,133,400, hereinafter Henderson). Claims 12, 13, 19, 20, and 26-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Saxe in view of Zweig in further view of Baum et al. (U.S. Patent No. 6,850,495).

II. Summary of Applicants' Response

The present Response amends Claims 8, 15, 22 and 24; and cancels Claims 21, 23, 28 and 30, leaving for Examiner's present consideration Claims 8-20, 22, 24, 26-27 and 29. Reconsideration of the Application is respectfully requested. Applicants respectfully reserve the right to prosecute any originally presented or canceled claims in a continuing or future application.

III. Claim Rejections under 35 U.S.C. § 101

In the Office Action, Claims 21-24 and 28-30 were rejected under 35 U.S.C. 101 as being directed toward non-statutory matter. The present Response hereby amends Claim 22 and 24 so as to more clearly define the statutory subject matter of the embodiment therein. Claims 21, 23, 28 and 30 have been canceled, rendering moot any rejections as to these claims. Applicants respectfully submit

that as amended, Claims 22, 24 and 29 now comply with the requirements of 35 U.S.C. § 101 and reconsideration thereof is respectfully requested.

IV. Claim Rejections under 35 U.S.C. §103(a)

In the Office Action, Claim 8, 10, 15, 17, and 21-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah et al.(U.S. Patent No. 6,538,992, hereinafter Subbiah) in view of Saxe (U.S. Patent No. 5,631,908, hereinafter Saxe), and further in view of Zweig (U.S. Patent No. 7,280,495, hereinafter Zweig). Claims 11 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Saxe, in view of Zweig in further view of Lefebvre (U.S. Patent No. 7,123,619, hereinafter Lefebvre). Claims 9, 14, and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Saxe, in view of Zweig in further view of Henderson et al. (U.S. Patent No. 7,133,400, hereinafter Henderson). Claims 12, 13, 19, 20, and 26-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah and Saxe in view of Zweig in further view of Baum et al. (U.S. Patent No. 6,850,495).

Claim 8

Claim 8 has been amended to more clearly define the embodiment therein. As amended, Claim 8 defines:

8. *A method for allowing a user to select a quality of service for message delivery, comprising:*
storing a selection of at least one of a first quality of service choice and a second quality of service choice for each user of an application server that employs a messaging service to deliver messages between a plurality of users, wherein the selection determines whether or not the user will be ensured of receiving the messages;
receiving, to said application server, one or more messages and processing each message received on a data stream using a single API of the messaging service;
segregating the plurality of users into a first group and a second group according to the selection of the quality of service choice associated with said each user such that users in the second group will be ensured of receiving the messages, while users in the first group will not be ensured of receiving the messages;
multicasting the message to the first group selecting the first quality of service

*wherein each user in the first group is not ensured of receiving said message;
sending the message directly to each user in the second group selecting the second
quality of service via point-to-point protocol and ensuring that the user in the
second group receives the message; and
receiving, by the messaging service of the application server, a response that
delivers an acknowledgement of receipt of the message from the second group
of users selecting the second quality of service choice and receiving no
acknowledgement from the first group of users selecting the first quality of
service choice;
wherein the application server transmits a single message by both (1) multicasting
said message and (2) directly sending said message via the point-to-point
protocol to multiple users.*

As amended, Claim 8 defines a method for transmitting messages in an application server between users according to their selection of a quality of service. The selection associated with each user will determine whether that user will be ensured of receiving the messages or whether they will receive messages with no assurance. The plurality of users are segregated into two groups, where users in the first group will not be ensured of receiving the messages and users in the second group will be ensured of receiving the messages. In this manner, a user is given a balancing choice on whether to receive messages faster or whether to instead accept the performance penalty associated ensuring the delivery and receipt of each and every message.

The application server transmits a single message by both multicasting the message to some users and sending the message via point-to-point protocol to other users. When sending the message via point-to-point protocol, the application server receives the acknowledgement of receipt and when multicasting, the application does not receive any acknowledgment. Thus, the application server will either receive an acknowledgment from the user or not, depending on that user's QOS selection.

Given the features defined in Claim 1, a user (e.g. application developer) is able to register a QOS selection with the application server's messaging service that specifies whether that user will be ensured of receiving messages. For some applications, it may be critical to receive each and every message and thus, the developer may wish to register the QOS selection to reflect it. For other applications, it may be more important to process messages as quickly as possible. Yet other applications may wish to receive a single message by both methods. The features of Claim 1 enable a single messaging service (e.g. JMS) that provides a user with the selection of either or both ways of communication.

Subbiah describes a mobile communication system where the QOS requirement for each user is obtained or computed based on the call set up. This QOS requirement is essentially the wireless connection speed assigned for each user. For example, some users may pay more for a premium faster connection, while others wish to obtain a slower and less costly service (col. 2, lines 29-33, 57-62). Packets with the same QOS are then grouped to the same queue.

Sax teaches hardware-based data flow improvements across cell-based switches. More specifically, Saxe appears to describe a switch that can be shared between unicast traffic and multicast traffic. This appears to be done by scheduling the multicast traffic into a subset of available slots and then scheduling the unicast traffic into whatever slots remain (col. 24, line 64 – col. 25, line 8).

Zweig teaches a reliable broadcast protocol in wireless networks. A protocol is described that allows acknowledging receipt of a multicast frame by a wireless unit. More specifically, a wireless access point supports the transmission of data frames to groups of mobile units and also allows those mobile units to send back an acknowledgement.

Applicants respectfully submit that these references fail to disclose the features of Claim 1, as amended.

Fundamentally, the cited references deal with QOS in the context of wireless network connections, such as mobile units that connect to an access point to gain access to the internet. In contrast, Claim 1 deals with an application server's messaging service, such as the Java Messaging Service (JMS). As a result of this distinction, the selection of quality of service, as well as the other features of Claim 1 are significantly different from any QOS mentioned in the cited references.

For example, in the Office Action, Subbiah was cited as disclosing a QOS choice. However, as amended Claim 1 now defines that the QOS *selection determines whether or not the user will be ensured of receiving the messages*. Subbiah does not teach such a distinction. Instead, Subbiah's QOS simply deals with how fast the wireless connection of each user will be depending on the price that user is paying (col. 2, lines 29-32). There is no mention in Subbiah of any QOS selection that will determine whether the user will be ensured of actually receiving the message or not, as defined in Claim 1. In fact, this type of selection wouldn't work in Subbiah since providing a choice to a typical internet subscriber as to whether he/she would like to ensure getting their messages wouldn't

normally be implemented. In Claim 1, it is the application developer that can register the QOS selection with the messaging service in order to specify whether their application needs to receive messages by a reliable protocol or not. Neither Subbiah, nor other cited references disclose such functionality.

Moreover, the cited references fail to disclose the step of segregating users into two groups where *users in the second group will be ensured of receiving the messages, while users in the first group will not be ensured of receiving the messages*, as defined in Claim 1. Once again, this feature wouldn't appear to be useful in the context of wireless internet connectivity. The cited references do not describe separating the users based on whether they will be ensured of receiving messages.

Furthermore, the cited references fail to disclose that the application server's *messaging service will obtain an acknowledgement from the second group of users and will not obtain an acknowledgement from the first group of users based on their selection of quality of service choice associated with each user*, as defined in Claim 1. None of this functionality is described in the references. At most, Subbiah appears to describe that packets are assigned to queues based on user's QOS. However, this is not the same as an application server's messaging service receiving acknowledgement from one group and not from the other group depending on each user's selection, as defined in Claim 1.

In light of the above remarks and amendments, Applicants respectfully submit that Claim 1, as amended, is neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

Claims 15, 22 and 24

Claims 15, 22 and 24, while independently patentable, recite limitations that, similarly to those discussed above with respect Claim 8, are not taught, suggested, nor otherwise rendered obvious by the cited references. Reconsideration thereof is respectfully requested.

Claims 9-14, 16-20, 26-27 and 29

Claims 9-14, 16-20, 26-27 and 29 are not addressed separately, but it is respectfully submitted that these claims are allowable as depending from an allowable independent claim, and

further in view of the comments provided above. Applicants respectfully submit that Claims 9-14, 16-20, 26-27 and 29 are similarly neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

It is also submitted that these claims also add their own limitations which render them patentable in their own right. Applicants respectfully reserve the right to argue these limitations should it become necessary in the future.

V. Request for Interview

Applicants respectfully submit that the claims, as amended, are now allowable and a notice of allowance is respectfully requested. However, in the event that the next office action is not an allowance, Applicants hereby respectfully request a telephonic interview with the Examiner prior to issuance of the next office action in order to expedite the prosecution of this application.

VI. Conclusion

In view of the above remarks, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and reconsideration thereof is respectfully requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. §1.136 for the time to respond up to and including November 25, 2008, 2008.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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